IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 158 OF 2001

Herman Gregory de Sa,
s/o Arlinda Francisco de Sa,
major of age, r/o House No.43,
Bhag, Cansaulim, Goa. ... Appellant.

Versus

1. Shri Lawrence D'Souza,
s/o Philip D'Souza, major
of age, r/o House No.88,
Bhaga, Cansaulim, Goa,
(driver and owner); and

2. The New India Assurance Co.
Ltd., Jagannath Bldg., Jose
Inacio Rd., Near Railway Gate,
Margao, Goa (Insurer). ... Respondents.

Shri S. S. Kakodkar, advocate for the appellant.

Shri N. N. Sardessai, advocate for respondent no.2.

CORAM : F. I. REBELLO, J.

DATE : 11th July, 2003.

ORAL JUDGMENT

The appellant was the claimant in Claim Petition No.384/95. His claim petition came to be dismissed by the Claims Tribunal by judgment and order dated 27th August, 2001. The learned Claims Tribunal held that the appellant herein had not been able to prove that the respondent no.1 had driven the scooter in a rash and negligent manner, thereby losing control over it and falling into the trench. Insofar as compensation is concerned, on the material on record, the learned Tribunal came to the conclusion that a sum of Rs.20,000/- would have been payable in case the appellant herein had succeeded. For the reason that issue no.1 was answered against the appellant herein the Claim

Petition was rejected. It is this Order which is the subject-matter of the Appeal.

2. It is the case of the appellant that on 18th March, 1995, at 10.25 hours, the appellant was riding as a pillion rider on scooter bearing no. GA-02-F-2786 driven by respondent no.1. Respondent no.1 drove his scooter in a rash and negligent manner and fell into a trench, after loosing control of the vehicle. On account of the incident, the appellant was hospitalized in the Goa Medical College at Bambolim from 18th March, 1995, for a period of three months.

3. Respondent no.1 did not deny the pleadings. It is only respondent no.2, the Insurance Company, which had filed their written statement and contended that there is an insurance policy, but the liability is as per the policy for the period from 29th November, 1994 to 28th November, 1995. The accident therefore, occurred when the respondent no.1 was having a valid insurance policy.

4. In support of the Claim Application, the appellant examined himself. He was cross-examined on behalf of respondent no.1. In the evidence of the appellant he has deposed that respondent no.1 was driving at a fast speed. In cross-examination suggestion was put to deny the said fact. However, as noted earlier, respondent no.1 did not plead that he was not driving. In cross-examination by respondent no.2

it was suggested that the Claim Petition was filed by the appellant in collusion with respondent no.1. However, from the written statement filed by the respondent no.1, I do not find any such plea as having been raised. The appellant also deposed to the accident and his treatment in Goa Medical College Hospital. He also examined as C.W.2 Caitan Braganza who also deposed that he was also riding his Chetak at the same time and found respondent no.1 driving at a fast speed and in fact he had overtaken the witness and that the accident occurred when the scooter which respondent no.1 was driving was at a distance of 40 mts. from the witness. I do not find anything from the evidence of this witness to disbelieve the said evidence. C.W.3, Krishna Fugre, at the relevant time was the Head Constable attached to the Birla Out Post. C.W. 4 is Dr. Carlos Barreto, who has deposed to the injuries suffered. He has deposed that there was fracture of the right tibia and fibula.

Inspite of the fact that respondent no.1 did not file the written statement and the fact that there was evidence by C.Ws.1 and 2, the learned Presiding Officer of the Motor Accident Claims Tribunal held that the appellant herein had been unable to prove that the accident was on account of rash and negligent driving. In my opinion, there was nothing in the evidence to disbelieve their versions. In the light of that it must be held that the finding of the learned Presiding Officer of the Claims Tribunal must be set

aside and it must be held that the appellant has proved issue no.1.

5. Once the issue no.1 is held to be proved, the appellant would be entitled to the compensation as awarded by the Claims Tribunal in the sum of Rs.20,000/-, which would carry interest at the rate of 8% per annum from the date of the claim petition which is 19th September, 1995, till payment. As respondent no.1 was insured with respondent no.2, the liability of the respondent nos.1 and 2 is joint and several.

In the light of that the following order:-

The Appeal is allowed. The impugned Order is set aside. Compensation is awarded in the sum of Rs.20,000/- (rupees twenty thousand only), with 8% interest thereon from 19th September, 1995 till payment. The liability is joint and several between respondent no. 1 and respondent no.2. Respondent no.2 is directed to deposit the amount awarded before the Motor Accident Claims Tribunal within a period of twelve weeks from today. In the circumstances, there shall be no order as to costs. The Appeal stands disposed of accordingly.

F. I. REBELLO, J.

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